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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SOMA SUNDARAM SANTHIVEERAN,
JULIANO GODINHO VARASCHIN DE MORAES,
and MARK C. SOLOMON

Appeal 2016-001226
Application 12/953,885
Technology Center 2600

Before ST. JOHN COURTENAY III, MARC S. HOFF, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–12, 14–17, 19, and 21–31. Claims 13, 18, and 20 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We Affirm.

Invention

The disclosed and claimed invention on appeal relates to “[a] device including a sensor to detect a holding position of a user of the device, an orientation sensor to detect an orientation of the device, and a controller to

render an input panel on at least one location of a display device based on the holding position of the user and the orientation of the device.”

(Abstract).

Representative Claim

1. A device comprising:
a sensor to detect a holding position of a user of the device;
an orientation sensor to detect an orientation of the device;
a display device to display an input panel for the user to interact with; and

a controller to determine an identity of the user and, [L] *after determining the identity of the user, render the input panel on at least one location of the display device based on the holding position of the user, the orientation of the device, and the identity of the user,*

wherein the at least one location on the display device on which the input panel is rendered is selected from at least one of a left center location of the display device and a right center location of the display device based on the identity of the user.

(Contested limitation L emphasized).

Rejections

- A. Claims 1–12, 14–17, 19, and 21–28 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over the combined teachings and suggestions of Tribble (US 2011/0242138 A1; pub. Oct. 5, 2011) in view of Saitoh et al, (US 2009/0201257 A1; pub. Aug. 13, 2009) and in further view of Tachibana (US 2007/0092118 A1; pub. Apr. 26, 2007).
- B. Claims 29–31 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over the combined teachings and suggestions of Tribble,

Saitoh, Tachibana and Krahenbuhl et al (US 2011/0050575 A1; pub. Mar. 3, 2011).

Grouping of Claims

Based upon Appellants' arguments, we decide the appeal of rejection A of claims 1–12, 14–16, 22, and 24–28 on the basis of representative claim 1. We address rejection A of claims 17, 19, 21, and 23 separately, *infra*. We decide the appeal of rejection B of claims 29–31 on the basis of representative claim 29. To the extent Appellants have not advanced separate, substantive arguments for particular claims or issues, such arguments are considered waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

ANALYSIS

We have considered all of Appellants' arguments and any evidence presented. We disagree with Appellants' arguments, and we adopt as our own: (1) the findings and legal conclusions set forth by the Examiner in the action from which this appeal is taken, and (2) the findings, legal conclusions, and explanations set forth in the Answer in response to Appellants' arguments. (Ans. 22–25). However, we highlight and address specific findings and arguments for emphasis in our analysis below.

*Rejection A of Independent Claim 1 under 35 U.S.C. § 103(a)
Contested Limitation L*

Issue: Under 35 U.S.C. § 103(a), did the Examiner err in finding the cited combination of Tribble, Saitoh, and Tachibana would have taught or suggested contested limitation L (“**after** *determining the identity of the user, render the input panel on at least one location of the display device based on the holding position of the user, the orientation of the device, and the*

identity of the user,”), within the meaning of independent claim 1, under a broad but reasonable interpretation? ¹ (emphasis added).

Appellants do not contest the combinability of the references.

However, Appellants focus on the Tachibana reference and contend:

. . . *Tachibana* fails to disclose that **the locations at which the icons in *Tachibana* are displayed** are “based on the identity of the user.” In fact, *Tachibana* appears to explicitly disclose the opposite: that the icons are already on the screen and that the players “press areas where icons 4, 5 are [already] displayed.” See *Tachibana* at paragraph [0023]. For example, according to the teachings of *Tachibana*, the locations of the icons are determined before the user is ever identified, and the user presses the areas of the screen where the icons are located. See *Tachibana* at paragraphs [0023]. In other words, *Tachibana* discloses that **the locations of the icons are selected before the user is identified**. As a result, *Tachibana* cannot be read to disclose or render obvious that the input panel is rendered “after determining the identity of the user” and “based on the identity of the user,” as recited in claim 1. Additionally, one of skill in the art would readily recognize that pressing an area on which an icon is already displayed does not disclose or render obvious “render[ing] the input panel **on at least one location of the display device based on ... the identity of the user,**” as recited in claim 1 (emphasis added).

(App. Br. 6).

¹ We give the contested claim limitations the broadest reasonable interpretation consistent with the Specification. See *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Regarding descriptions in the Specification that are not definitions or clear and unambiguous disclaimers, our reviewing “court has repeatedly ‘cautioned against limiting the claimed invention to preferred embodiments or specific examples in the specification.’” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1346–47 (Fed. Cir. 2015) (quoting *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1328 (Fed. Cir. 2002)).

However, we find Appellants fail to address the Examiner’s specific findings, which are based on the *combined* teachings and suggestions of Tribble, Saitoh, and Tachibana. In particular, the Examiner relies on Saitoh regarding the temporal “after” limitation recited in contested limitation L. *See* Final Act. 4–5:

However, Saitoh discloses a controller to determine an identity of the user and, **after** *determining the identity of the user*, render the image on at least one location of the display device based on the identity of the user, wherein the at least one location on the display device on which the image is rendered is based on the identity of the user (Saitoh, figs. 3A-B, disclosed in ¶ [0057]; refer to ¶ [0073], where they may be a plurality of fingerprint sensors). (emphasis added).

As further explained by paragraph 54 (which precedes paragraph 57 in the same column on page 3), Saitoh teaches an embodiment where a registered fingerprint is obtained *first* (to determine the identity of the user), *before* the user’s finger is enabled to be used as a touch screen input to change the direction of the displayed screen contents (e.g., to render a portrait orientation):

[0054] Image processing portion 19 determines whether the fingerprint sensed by fingerprint-sensor-equipped key 32 matches with a fingerprint of the user that is registered in advance, or not. When there is a match, finger direction determining portion 18 determines the direction of the finger from the direction of the fingerprint, and notifies main controller 24 of the finger direction. Nonvolatile memory 17 has stored the user's fingerprints that are registered in advance.

(Saitoh ¶ 54; *see also* Fig. 5).

Our reviewing court guides that one cannot show nonobviousness by attacking references individually where the rejections are based on

combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). This reasoning is applicable here, because Appellants attack Tachibana in isolation. (App. Br. 6). We also find that the Examiner's responsive explanation regarding what Tachibana teaches is supported by a preponderance of the evidence:

Tachibana explicitly discloses in ¶ [0023] that “When the players A, B **press areas where the icons 4, 5 are displayed** with their fingers, **fingerprints of the players A, B are scanned in by the touch panel 1** and identified by the gaming machine 10 (see FIG. 1). As will hereinafter be described in detail, an **input operation** process for the icons 4,5 is valid, **only** when the fingerprints of fingers touching the icon 4,5 are identical to fingerprints previously registered in the gaming machine 10.” Furthermore, ¶ [0025] reads on to state “the **players A, B can freely locate the icons 4, 5** at their desired positions **by the operations A** and drop bombs from their desired positions by the operations B.” To be clear, the moving operation to freely move icons 4,5 disclosed in ¶ [0024] -¶ [0025] is clearly stated with fingerprint correspondence in figure 4.

(Ans. 23).

Further, and as relied upon by the Examiner (Final Act. 3), we find Tribble (¶ 50) expressly teaches using, for example, accelerometer(s) to obtain information concerning the orientation (e.g., portrait or landscape) of a device:

Device 100 optionally includes, in addition to **accelerometer(s)** 168, a magnetometer (not shown) and a GPS (or GLONASS or other global navigation system) receiver (not shown) **for obtaining information concerning the location and orientation** (e.g., **portrait or landscape**) of **device 100**.

Tribble (¶ 50) (emphasis added).

Cf. with Appellants' Spec. ¶ 27:

As noted above and as illustrated in Figure 2B, the **device 200**

can further include **an orientation sensor 240 configured to detect an orientation of the device 200**. The orientation sensor 240 can be a hardware component of the device 200 configured to detect and/or identify an orientation of the device 200 relative to one or more axes. **In one embodiment, the orientation sensor 240 can include a gyroscope and/or an accelerometer** to detect a tilt, rotation, and/or movement of the device 200 along or around one or more axes. One or more of the axes can include an X axis, a Y axis, and/or a Z axis. When detecting the orientation of the device 200, **the orientation sensor 240 can detect whether the device 200 is being held in a portrait orientation or in a landscape orientation** based on the hand position 280 of the user 290.” (emphasis added).

We find the evidence of record relied on by the Examiner is compelling and speaks for itself. (*Id.*). Moreover, our reviewing court guides, “the question under 35 U.S.C. § 103 is not merely what the references expressly teach but what they would have suggested to one of ordinary skill in the art at the time the invention was made.” *Merck & Co., Inc. v. Biocraft Laboratories, Inc.*, 874 F. 2d 804, 807–808 (Fed. Cir. 1989), cert. denied, 493 U.S. 975 (1989); *see also* MPEP § 2123(I).

Therefore, on this record, and based upon a preponderance of the evidence, we are not persuaded the Examiner erred. Accordingly, we sustain rejection A of independent representative claim 1. Associated grouped claims 2–12, 14–16, 22, and 24–28 (not separately argued with particularity) fall with claim 1. *See Grouping of Claims supra*.

Rejection A of Claims 17, 19, 21, and 23

Regarding these dependent claims, Appellants advance nominal arguments in the principal Brief (9–11) which we find: (1) merely assert the

recited claim language is not taught or suggested by the cited combination, and, (2) essentially restate arguments previously advanced regarding claim 1, which we have fully addressed and found unpersuasive above.²

Therefore, on this record, and based upon a preponderance of the evidence, we are not persuaded the Examiner erred. Accordingly, we sustain rejection A of dependent claims 17, 19, 21, and 23.

Rejection B of Claims 29–31 under 35 U.S.C. § 103(a)

Appellants contend dependent claims 29–31 are non-obvious for the same reasons previously argued with respect to independent claims 1, 9, and 16. (App. Br. 11).

However, we found Appellants’ arguments for claim 1 (and independent claims 9 and 16) unpersuasive for the reasons discussed above. Because Appellants do not advance separate, substantive arguments for rejection B claims 29–31, we sustain rejection B of these claims for the same reasons discussed above regarding claim 1.

Reply Brief

To the extent Appellants may advance new arguments in the Reply Brief not in response to a shift in the Examiner’s position in the Answer, we note arguments raised in a Reply Brief that were not raised in the Appeal Brief or are not responsive to arguments raised in the Examiner’s Answer

² See *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.”)

will not be considered except for good cause. *See* 37 C.F.R. § 41.41(b)(2).

Conclusion

For at least the aforementioned reasons, we find a preponderance of the evidence supports the Examiner's underlying factual findings and ultimate legal conclusion of obviousness regarding all contested issues on appeal.

DECISION

We affirm the Examiner's rejections of claims 1–12, 14–17, 19, and 21–31 under 35 U.S.C. § 103(a).

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 41.50(f).

AFFIRMED